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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Twelfth session
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Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from indigenous peoples' and non-governmental organizations

The Inuit Tapirisat of Canada

[Original: English]
[31 May 1994]

A comment on article 3 of the draft declaration on the rights of indigenous peoples

1. Inuit Tapirisat of Canada supports the recognition of the right of indigenous peoples to self-determination as expressed in article 3 of the draft declaration on the rights of indigenous peoples and will make comments on other aspects of the draft declaration at a later date.

2. The right to self-determination is regarded as a prerequisite to the full enjoyment of all human rights, including individual human rights. In our view, there is a critical connection between the historical denial of our right to self-determination within domestic and international legal systems and racial discrimination. Just as human rights are interdependent, so too are various forms of domination and oppression.

3. Racism at an individual level is spawned by fundamental attitudes at a collective level, that is, by continuing assumptions about racial or cultural superiority and by rationalizations of domination of other peoples. The legal system is often an instrument of perpetuating such biases. The impacts of racism and colonialism on aboriginal peoples cannot be adequately addressed by individual rights alone.

4. In a cultural context, the protection of individual rights provides freedom to assimilate for individuals who wish to assimilate, but insufficient protection against assimilation for those who don't. The protection of collective rights can provide freedom at the individual and the collective level to choose assimilation, or not. The draft declaration recognizes this by addressing not just the status of indigenous peoples as individuals, equal in dignity, rights and freedoms to other individuals, but, just as importantly, the status of indigenous peoples and cultures as equal in dignity, rights and freedoms to other peoples and cultures. Inuit believe in individual and collective rights as complementary aspects of an holistic human rights regime.

5. International law is not without its problems from an Inuit perspective. First, indigenous peoples have been excluded, with the notable exception of the draft declaration on the rights of indigenous peoples, from direct and equal participation in the development of the existing international human rights standards that purport to be expressions of human rights principles universal to all peoples and cultures. Secondly, prior to the development of the draft declaration, most legal opinion has generally failed to recognize the application of the right of self-determination to indigenous peoples.

6. Arbitrary restrictions on the universal application of the right of self-determination, such as the geographic one of requiring a physical separateness from the colonizer (preferably by water), seriously undermine, if not render meaningless, the notion of the universality of human rights. Such arbitrary restrictions on the application of the right of self-determination also conflict with the notions of the indivisibility and interdependence of human rights. Indigenous peoples are expected to accept the universality premise of human rights theory with respect to individual human rights but are also expected to accept our arbitrary exclusion from the fundamental collective human right upon which individual human rights are said to depend.

7. The denial of the right of self-determination to indigenous peoples because our peoples and our territories have suffered a form of colonization trapping us within existing States is no less discrimination, is no less an arbitrary and unjust denial of fundamental human rights.

8. The draft declaration on the rights of indigenous peoples is important for its contribution to ensuring the universality of all human rights, and to ensuring the full enjoyment of human rights by all indigenous peoples by securing our inalienable right to self-determination.

TUPAJ KATARI INDIAN MOVEMENT

[Original: Spanish]
[30 May 1994]

1. Having carefully considered the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1993/29), the Tupaj Katari Indian Movement takes this opportunity to make a few comments as a contribution to the debate on basic matters of concern to indigenous peoples and nations throughout the world.

2. We take note with satisfaction of the constructive contributions made by all participants in the lengthy and difficult discussions that led to tangible progress on the draft Declaration on the Rights of Indigenous Peoples.

3. Despite the considerable efforts of the members of the Working Group, the concessions by some Governments and the great interest shown by indigenous delegations, the document has some weaknesses and there are serious substantive differences of opinion about concepts and terms, such as recognition as "peoples and nations", "the right to self-determination", "the right to possession of their lands and territories" and "the enjoyment of their natural resources", key elements which are the soul of the Declaration.

4. The concept of the right of peoples to self-determination has existed from time immemorial and its interpretation and implementation do not depend exclusively on international law, as stressed by Indian representatives and non-governmental observers.

5. In the light of historical developments and political, legal and moral factors, we note that, at the time when the Spanish conquistadors landed on American soil, social and religious life was organized in relation to the earth, the sun and the elements of the cosmos and governed by customary law based on the universal principle of self-determination.

6. On the basis of this ancestral law, the Incas were, to a greater or lesser extent than the Maya, Aztec and Aymara civilizations, able, in the vastness of the Tahuantinsuyu, to create rules for the management and determination of their own destinies, to build a relatively prosperous society, to regulate production and consumption, to eliminate poverty and unemployment, to guarantee respect for nature and to ensure the satisfaction of the basic needs of communities, as well as collective well-being from cradle to grave.

7. Contrary to what has been obstinately maintained by some Governments, this historical reality leads us to the following irreversible conclusion: the right to self-determination is deeply rooted in the inherent or innate principles of peoples and nations from the beginning to the end of life.

8. Any policy intended to eliminate this inalienable, imprescriptible, indivisible and natural right would deprive the Declaration of its legal,

political and social substance, reducing it to no more than abstract recommendations.

9. The recognition of the principle of self-determination without restriction or conditions is the legal basis of all the provisions of the Declaration and the essential condition for the survival of indigenous peoples and basic enjoyment of their fundamental rights and freedoms.

10. According to the customary law and international law interpretation, self-determination belongs to peoples, not to States. The question whether or not it exists should therefore not be open to discussion. In accordance with the pure idea of democracy and social justice, States should only recognize this legitimate right, regulate its operation and guarantee its full enjoyment.

11. At the international legal level, the Declaration on the Granting of Independence to Colonial Countries and Peoples, signed in 1960, recognizes the right to self-determination, by virtue of which colonial peoples freely determine their political status, freely pursue their economic, social and cultural development and freely dispose of their natural wealth and resources. It is a prerequisite for the full enjoyment of any other fundamental right or freedom.

12. Of course, the instrument of universal scope is the Charter of the United Nations, Article 1 of which refers to the need "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

13. Reaffirming these principles that are recognized by the international community, the International Covenant on Economic, Social and Cultural Rights not only gives peoples the right to self-determination, but also makes it an obligation for States to promote and respect that right, in conformity with the provisions of the Charter of the United Nations.

14. There is thus no legal basis and no moral justification for the objections expressed by the Governments of Argentina, Brazil, Canada and the United States. According to their arguments, the unilateral self-determination of Indians would lead to the break-up of the State and would therefore threaten its sovereignty and integrity. This subjective assessment is not convincing, since it is contrary to the collective and community spirit of indigenous nations and incompatible with the primitive nationalism of eastern Europe.

15. The right to self-determination as defined in the draft declaration reflects one of the legitimate aspirations to greater autonomy under an internal regime, in the sense of self-government or self-management. The exercise of such autonomy would enable indigenous communities and nations to be governed by their own laws, freely to determine the forms and conditions of their own development and to assume their obligations as basic factors contributing to the consolidation of national unity and the maintenance of international peace and security.

16. As stated in the report, the debates have been characterized year after year by the implicit negation of the concept of "indigenous peoples" by some conservative Governments.

17. The selfishness that we the defeated come up against is disappointing. Five hundred years after the so-called "meeting of two cultures", Western culture continues to be determined to dominate. Accord to its ethnocentric approach, Indians, who are descendants of advanced civilizations and upholders of cultural values and means of production in harmony with the laws of nature, are no more than "vulnerable minorities, populations, ethnic groups and tribal groups". In other words, we are regarded as second-class persons.

18. Endorsing the principles of the universality, indivisibility and interdependence of the rights and freedoms proclaimed by the World Conference on Human Rights, we indigenous peoples rightly demand fair and equitable recognition of the Indian identity, not as a purely ethnic or racial matter, but as a social, political, cultural and economic identity fully entitling indigenous peoples to take part in national and international life. The restitution to indigenous peoples of the dignity and identity they were deprived of and their recognition as subjects of international law should be acts of human justice in the noblest and loftiest sense.

19. Indians and the earth have the same identity. In this sense, the land question is of key importance for the survival of indigenous peoples and is the material basis for the achievement of the objectives established in the Declaration.

20. The scope of rights to the land and territory traditionally occupied by indigenous peoples and of the right to enjoy their natural resources as defined in the Declaration does not restore the customary right of collective ownership or make it an obligation for States to guarantee its full exercise.

The other media

[Original: English]
[3 June 1994]

SUMMARY OF RESOLUTIONS OF WORKSHOPS ON INDIGENOUS AND TRIBAL PEOPLES' STRUGGLE FOR RIGHT OF SELF-DETERMINATION AND SELF-GOVERNMENT IN INDIA

1. The participants of the workshops discussed the proposed United Nations declaration on the rights of indigenous peoples, the definition of indigenous peoples developed by the United Nations Sub-Commission and the objection raised by the Government of India.

2. The participants rejected the position of the Government of India that the "Scheduled Tribes" of India are not indigenous peoples as defined by the United Nations Working Group on Indigenous Populations. They pointed out that the Hindi word for tribe is adivasi which means "original inhabitant". The Government of India is trying to change the meaning of this word into "tribe", which does not exist in Hindi. They said that the Government of India considers the "Scheduled Tribes" as backward people who have to be "educated and developed". This is a colonial perspective which the Indian ruling elite too have inherited from the British colonizers of India.

3. The participants felt that the United Nations definition relies too much on the Western experience and therefore recognizes only those peoples as indigenous whose foreparents were conquered by foreign invaders. In the draft declaration the term colonialism has been used in a narrow sense. It needs to be redefined considering the situation of South and South-East Asia and the rest of the world. The participants call upon the United Nations Working Group on Indigenous Populations to take note of the reality of the indigenous/tribal peoples of South Asia and South-east Asian countries and widen the scope of the definition of the indigenous peoples to give proper recognition to the indigenous/tribal peoples in this region.

4. Indigenous/tribal peoples are the descendants of the first settlers or residents of a country who once controlled the entire territory of their habitat, before being pushed into relative geographical isolation by outsiders and invaders. They are today suffering from political, economic and social discrimination for being what they are. The so-called mainstream ruling elites of these countries treat the homelands of the indigenous/tribal peoples as their internal colony.

5. While developing the criteria mentioned above the workshop recognized that many indigenous/tribal communities are no longer isolated from the so-called mainstream. Their lands and resources have been taken over by outsiders and these people have been completely marginalized in their own ancestral homeland. The case of the Tripura in north-east India is unique where, within the last 45

years, the Tripuri/Kokborok indigenous peoples have been reduced to a minority by a constant influx of outsiders from India and erstwhile East Pakistan, now Bangladesh.

6. The systematic assault of the State and the so-called mainstream cultures together with the loss of land and forests, the material base for their culture and ethos, have pushed the newer generations of adivasis into "transience".

7. The traditional homelands of indigenous/tribal peoples have been arbitrarily cut up by former colonial rulers, resulting in the division of their homeland into different states or provinces within a country as well as between nation States across international borders. These divisions are being perpetrated by the ruling elites of the post-colonial nation States. This has led to militarization, invoking of national security considerations to justify ruthless suppression of the just demands for reunification of homelands and the right of self-determination of divided indigenous peoples.

8. The participants from mainland India, even while asserting that the adivasis are basically the indigenous/tribal peoples, have referred to themselves as adivasis, a term which includes the concept of indigenous/tribal, rather than using the unfamiliar deshaj to indicate "indigenous".

9. The workshops therefore recommend that the United Nations Sub-Commission should take notice of this situation of internal colonialism and suitably amend the definition.

10. The workshops also developed the following criteria for defining the adivasi/indigenous/tribal peoples in India:

(a) Relative geographical isolation of the community;

(b) Reliance on forest, ancestral land and water bodies within the territory of the community for food and other necessities;

(c) A distinctive culture which is community oriented and gives primacy to nature;

(d) Relative freedom of women within their society;

(e) Absence of a division of labour and caste system;

(f) Lack of food taboos.

11. On the question of right of self-determination, the participants felt that the right of self-determination and self-governance were central issues in all their work among the tribals and, in some way or the other, agitations and struggles of the tribals around the issues of jal, jungle and jamin (water, forest and land), the integrity of their culture and ethos and their right to hamara gaon hamara raj (our village, our rule) were intrinsically related to

these rights. The participants also endorsed article 3 of the United Nations declaration.